

D/L.5.
March 3, 2025.
MNS.

FA No. 359 of 1977

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CAN 1 of 2025

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CAN 2 of 2025

Messrs. S. Lahiri and Co.

Vs.

Messrs. Commercial Properties and
Merchandise Ltd.

Mr. Debnath Ghosh,
Mr. Joyjit Roy Choudhury

... for the appellant.

Mr. Soumya Majumder,
Mr. Sumanta Biswas,
Ms. Rekha Ghosh,
Mr. Sk. S. Islam

...for the respondent.

Re : CAN 2 of 2025 (condonation application)

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CAN 1 of 2025 (restoration application)

1. Heard learned senior counsel for the parties.
2. It transpires that at the time of dismissal of the appeal for default along with the connected applications, none of the parties were present.
3. It is pointed out by the appellant/petitioner that subsequently, after the respondent took steps in the Executing Court, the appellant became aware of the dismissal of the appeal for default and has filed the applications immediately thereafter.
4. Learned senior counsel appearing for the respondent opposes the prayer and submits that only upon being steps taken before the executing court, the appellant filed the present applications. Furthermore, it is

submitted that the condition of grant of stay initially imposed in respect of the occupation charges is meager, taking into account the current market value of the property.

5. Be that as it may, we are satisfied upon a consideration of the pleadings in the applications that the delay in filing the application for restoration has been sufficiently explained and there was ample reason for the appellant not being present at the time when the appeal was dismissed for default.

6. Accordingly, CAN 2 of 2025 is allowed, thereby condoning the delay in filing CAN 1 of 2025.

7. CAN 1 of 2025 is also allowed, thereby recalling the order dated October 17, 2023 passed in FA No. 359 of 1977 and restoring the aforesaid appeal to its original file and number. The stay order initially granted and subsisting at the time of dismissal of the appeal for default is also revived, subject to the condition imposed for the same initially.

8. However, liberty is granted to the respondent to take out an appropriate application for modification of the stay order insofar as the condition of the deposit of occupation charges and the quantum thereof is concerned.

9. Liberty to the parties to mention such application, as and when the same is filed, for inclusion in the list.

(Uday Kumar, J.)

(Sabyasachi Bhattacharyya, J.)